

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KAY STARNES, :
: .
Plaintiff : .
: .
v. : CIVIL ACTION
: FILE NO. _____
: .
PUBLIX SUPER MARKETS, INC., :
: .
Defendant : .

PETITION FOR REMOVAL

TO: The Judges of the United States District Court, Northern District of Georgia

The Petition of Defendant Publix Super Markets, Inc. respectfully shows the Court as follows:

1.

A civil action has been brought against the Petitioner which is now pending in the State Court of Cobb County, State of Georgia, by the above-named Plaintiff, said action being designated as Civil Action No. 21-A-1129. The suit was initially filed in the State Court of Gwinnett County on December 4, 2020 and transferred to the State Court of Cobb County in March 2021. In the within suit, Plaintiff Kay Starnes now seeks to recover of Defendant Publix Super Markets, Inc. a sum in excess of \$75,000.00 exclusive of interest and costs.

2.

The Plaintiff is now, was at the time of the commencement of this action, and at all times since has been a citizen and resident of the State of Georgia.

3.

Defendant Publix Super Markets, Inc. is now, was at the time of the commencement of this lawsuit, and at all times since, a corporation organized and existing under the laws of the State of Florida, having its principal place of business in Lakeland, Florida.

4.

The within action was not removable to this Honorable Court when initially filed in the State Court of Gwinnett County, as the Complaint did not establish an amount in controversy in excess of \$75,000 for purposes of federal court diversity jurisdiction. The Plaintiff's *Complaint for Personal Injuries* did not set forth a specific prayer for dollar recovery, save to allege medical expenses in excess of \$26,570.39. From the date of the filing of the within action in the State Court of Gwinnett County on December 4, 2020, through August 2, 2021, Plaintiff Kay Starnes did not provide Defendant Publix Super Markets, Inc. with any papers, writings or documents reflecting an amount in controversy in excess of \$75,000. On August 2, 2021, Plaintiff's counsel, Campbell Williamson at Schneider Hammers, LLC, sent an e-mail to counsel for Defendant Publix Super Markets, Inc.

advising that the amount in controversy in the within action is in excess of \$75,000. Specifically, Mr. Williamson, in his e-mail, advised as follows: “**Also, Ms. Starnes’ demand is \$250,000.**” Attached is an *Affidavit of Gene A. Major* (Exhibit R) reflecting the foregoing and making an evidentiary showing that the amount in controversy in the within action is now in excess of \$75,000 and that the within action is removable to this Honorable Court by reason of federal court diversity jurisdiction.

5.

Attached hereto are copies of the following pleadings and other filings in the within action, which was initially filed in the State Court of Gwinnett County (Civil Action No. 20-C-086556-S6) and later transferred to the State Court of Cobb County (Civil Action No. 21-A-1129):

- Exhibit A. Summons & Complaint;
- Exhibit B. Plaintiff’s First Continuing Interrogatories to Defendant;
- Exhibit C. Plaintiff’s First Request for Production of Documents and Things to Defendant;
- Exhibit D. Answer of Publix Super Markets, Inc.;
- Exhibit E. Demand for Twelve-Person Jury;
- Exhibit F. Rule 5.2 Certificate of Service;
- Exhibit G. Rule 5.2 Certificate of Service;
- Exhibit H. Rule 5.2 Certificate of Service;

- Exhibit I. Defendant Publix Super Markets, Inc.'s Motion to Transfer Venue and Brief in Support Thereof;
- Exhibit J. Plaintiff's Response to Motion to Transfer Venue;
- Exhibit K. Plaintiff's Amended Response to Motion to Transfer Venue;
- Exhibit L. Order Transferring Venue to Cobb County;
- Exhibit M. Rule 5.2 Certificate of Service;
- Exhibit N. Joint Motion to Extend Discovery;
- Exhibit O. Notice of Deposition of Plaintiff;
- Exhibit P. Order Extending Discovery; and
- Exhibit Q. Consent Protective Order Regarding Confidentiality.

6.

Now, within twenty (20) days following receipt of papers or documents reflecting an amount in controversy in excess of \$75,000 and the existence of federal court diversity jurisdiction, Defendant Publix Super Markets, Inc. has filed the within Petition for Removal to this Honorable Court.

7.

This Honorable Court has federal diversity jurisdiction under 28 U.S.C. 1332, in that it is a civil action wherein the amount in controversy exceeds seventy-five thousand dollars (\$75,000), exclusive of interest and cost, and there is diversity of citizenship between the parties.

8.

As between the Plaintiff and Defendant Publix Super Markets, Inc. there exists complete diversity of citizenship under 28 U.S.C. 1332(a).

9.

Pursuant to 28 U.S.C. 1441, et seq., this action is now removable by reason of diversity of citizenship, there being more than \$75,000.00 in controversy, exclusive of interest and costs.

WHEREFORE, Defendant Publix Super Markets, Inc. files this Petition for Removal of said cause to this Court.

FAIN, MAJOR & BRENNAN, P.C.

/s/ Gene A. Major

GENE A. MAJOR

Georgia State Bar No. 466650

JAMES W. HARDEE

Georgia State Bar No. 324399

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CERTIFICATE OF SERVICE

This is to certify that I have this date served upon all counsel in the foregoing matter a copy of the foregoing **Petition for Removal** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification to all attorneys of record.

This 20th day of August, 2021.

FAIN, MAJOR & BRENNAN, P.C.

/s/ Gene A. Major
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